example) while the average citizen asks in vain for one of the coins at the teller window.

The shortage—and the profiteering—probably will get worse unless the Treasury abandons its previously announced plan to stop striking the new half dollars for 1964 once 90 million of them have been minted. Jones wants Congress to pass legislation enabling the Treasury to place the remainder of this year's mintage in the hands of post offices, to be distributed one to a customer, at 50 cents per coin. Congress also could authorize the Treasury to continue minting the Kennedy half dollar with the 1964 date through the years ahead. But no one in Congress seems really interested in pricking the speculative bubble.

Col. Charles E. Yeager, West Virginia Native, Honored at Smithsonian Institution—Interstate Commerce Commissioner Virginia Mae Brown, of West Virginia, Praised in Separate Gathering

EXTENSION OF REMARKS
OF
HON. JENNINGS RANDOLPH
OF WEST VIRGINIA
IN THE SENATE OF THE UNITED STATES
Monday, June 8, 1964

Mr. RANDOLPH. Mr. President, today the National Air Museum, of the Smithsonian Institution, was presented with portraits of the famed aviation pioneers Col. Charles E. Yeager and Jacqueline Cochran. They were painted by noted artist, Chet Engle. Colonel Yeager, who now heads the U.S. Air Force Aerospace Research Pilot School at Edwards Air Force Base, Calif., is a native West Virginian. Many of his relatives, including his mother, a sister, and two brothers, still reside in the State. On October 14, 1947, while flying the Bell X–1, he became the first pilot to break the sound barrier. Miss Cochran is the holder of numerous women's flight records for distance and speed. She was the first woman to fly faster than the speed of sound, and has recently piloted an F–104 Starfighter at a speed exceeding mach 2.

The portraits were presented by chairman of the Lockheed Aircraft Corp., Courtlandt S. Gross, during ceremonies attended by West Virginia Representative KEN HECHLER.

A luncheon was held in honor of Colonel Yeager and Miss Cochran. On that occasion, I was privileged to greet those present and to commend the service of these two leaders in the world of flight. I was especially gratified to participate, since it was my responsibility to author, while a Member of the House of Representatives, the legislation which established the National Air Museum. This measure, Public Law 79–9555, became law on August 12, 1946.

Mr. President, it is not often that two West Virginians are guests of honor at two separate luncheons, in the same Washington hotel, on the same day. However, that was the case today.

While Colonel Yeager was being feted, at another gathering members of the Interstate Commerce Commission and business leaders assembled to recognize that group's first woman Commissioner, Mrs. Virginia Mae Brown, of West Virginia.

Sponsored by the Transportation Association of America, and attended by approximately 100 persons, this event was a fitting tribute to a public servant who has only recently assumed new responsibilities in the Federal service. Prior to her appointment, Mrs. Brown served West Virginia as assistant attorney general, insurance commissioner, and a member of the State public service commission. I was happy to have the opportunity to speak briefly to those present on that occasion, and to commend Mrs. Brown's contributions to the well-being of citizens of the Mountain State and the Nation.

The Case of Otto F. Otepka

EXTENSION OF REMARKS
OF
HON. J. ARTHUR YOUNGER
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Monday, June 8, 1964

Mr. YOUNGER. Mr. Speaker, the article which appeared in the Sunday Star of June 7, 1964, on Otto F. Otepka, written by Cecil Holland, gives a very interesting and documented account of this most unusual case. I am sure the Members of Congress and the readers of the CONGRESSIONAL RECORD who did not have an opportunity to read Mr. Holland's article will be pleased to find it in the CONGRESSIONAL RECORD. Mr. Holland's article follows:

OTEPKA IN LIMBO, BUT SECURITY CASE IS STILL EXPLOSIVE

(By Cecil Holland)

At about 10 minutes before noon on June 27, 1963, Otto F. Otepka was summoned into the office of John Reilly, his superior in the State Department's Office of Security.

At that meeting, Mr. Reilly told Mr. Otepka, 47-year-old Government career man, that he was being detached from his job as Chief of the Security Evaluation Division and was being assigned to write a handbook on security.

Mr. Reilly then went with Mr. Otepka to his office and, as they walked down the corridor, according to Mr. Otepka, "doors popped open" all over the place.

In Mr. Otepka's office six of Mr. Reilly's own men joined them. They demanded and got the combinations of all safes. The locks were changed and Mr. Otepka was denied access to all his records, including personal papers.

SEEKS EXPLANATION

After the lunch hour, Mr. Otepka went back to Mr. Reilly. He demanded an explanation.

According to Mr. Otepka, Mr. Reilly "shook his finger in my face," and reminded him of an earlier conference in which he had stressed "institutional loyalty." To this, Mr. Otepka says, his response was that "my first loyalty is to my country."

"You're punishing me for telling the truth on Capitol Hill. I won't take back a word of it," Mr. Otepka added.

The upshot was that Mr. Otepka found himself in an office with no material to carry out his assigned task of writing a security handbook.

For a while he got the CONGRESSIONAL RECORD. Then this was stopped. At his insistence he got it again.

The State Department information that came to him consisted of announcements of personnel changes, parties, and the activities of bowling teams.

SHUNNED BY ASSOCIATES

In time it became clear to Mr. Otepka. He had been consigned to that "limbo large and broad" and for the most part "unpeopled and untrod."

Associates avoided coming to his office. They passed him in the hall with the barest nod. As in most offices, the State Department is a social sort of place. If anyone is reassigned somewhere else, there is often a luncheon to wish him well in his new post.

Mr. Otepka hasn't been invited to any luncheons for anyone since his difficulties began.

He believes his office is bugged and his telephone line are tapped. If anyone calls, except on the most perfunctory matter—including his lawyer—Mr. Otepka takes the number. Then he goes elsewhere to call back.

It's the same at his Wheaton, Md., home. There are strange noises on his phone every time it rings. A friend expert in electronics, has told him this indicates it might be tapped.

CHARGED LAXITY IN SECURITY

But there are few occasions which require Mr. Otepka to leave is home to return a call. People who used to call him have stopped doing so.

What caused all this was Mr. Otepka's testimony more than a year ago before the Senate Internal Security Subcommittee of alleged laxity and mismanagement in the Department's security program.

What compounded it was Mr. Otepka's testimony and that of Mr. Reilly, then a deputy assistant secretary, didn't jibe. (Mr. Reilly, a former Justice Department attorney, since has been separated from the State Department for being less than forthright with the Senate subcommittee.)

Mr. Otepka supplied the subcommittee wtih three memorandums on personnel matters and some suggested questions to vindicate his position.

As a result, Mr. Otepka was put under surveillance, and arrangements, it was later shown, were made to record his telephone calls and conversations in his office.

DENIED "BUGGING" PHONE

In July and August last year, Mr. Reilly and two of his associates were questioned about this by the Senate subcommittee. Under oath each denied any knowledge that any listening device had been attached to Mr. Otepka's telephone.

Later, Mr. Reilly and Elmer D. Hill admitted recording Mr. Otepka's calls and another associate, David Belisle, admitted knowing that this had been done.

Mr. Reilly and Mr. Hill abruptly were separated from the Department. Mr. Belisle is still there.

In spite of all this, the charges that have been preferred and the notice of dismissal that had been issued against Mr. Otepka were not withdrawn. He was charged with conducting himself "in a manner unbecoming an officer of the Department of State" by furnishing information to the Senate subcommittee.

In a letter dated last September 23, the State Department notified Mr. Otepka of 13 charges as the basis for his dismissal from the Department.

Charges one and two alleged that he gave copies of a classified memorandum to the Senate Internal Security Subcommittee. The third charge accused Mr. Otepka of pro-

viding the subcommittee with an investigative report concerning a prospective Department employee.

Charges 4, 6, 8, and 10 alleged that the security officer was responsible for cutting classified indicators from the tops and bottoms of classified memorandums, thus declassifying the material.

Charges 5, 7, 9, and 11 accused him of mutilation of documents in the same connection.

Charges 12 and 13 involved the accusation that Mr. Otepka had furnished the subcommittee with a series of questions for use in interrogating Mr. Reilly and another member of the office.

DEFENDS ACTIONS

Mr. Otepka, in his response, admitted supplying certain information to the subcommittee.

But he defended this on two grounds: It was necessary to support his previous testimony and it was in response to a demand of the Congress. He contended that the material involved no investigative data.

Mr. Otepka also admitted supplying questions for the subcommittee to ask his superiors. But he argued this was done to defend himself against "false testimony."

Mr. Otepka denied the charges that he was responsible for clipping the security classifications from documents or otherwise mutilating them.

All the charges were sustained in a November 5 letter signed by John Ordway, chief of the Department's personnel operations division.

Then the long appeal process got under way.

SENATORS PROTEST

The Department's action drew a bitter protest from the Senate Judiciary Committee. The protest was contained in a letter delivered personally by Senator Dodd, Democrat, of Connecticut, a member of the Internal Security Subcommittee, to Secretary of State Rusk last November.

Many weeks ago, the Department suggested six names from which a hearing panel would be drawn for the Otepka appeal.

Mr. Otepka objected to all of them but said that if he must he would accept one on the list. Nothing has happened since.

The case, a State Department spokesman said, is "still where it was."

Mr. Otepka is still on the payroll at a salary of about $18,000 a year. In addition to drawing up a security manual, he has been given another chore.

Under recent instructions, he was directed to catalog and index the ideas, opinions, attitudes, and recommendations of Members of Congress on subversive activities based on speeches and records of public hearings.

The case has aroused concern in some Capitol Hill circles. If the charges against Mr. Otepka are sustained, some Members of Congress feel it will be a serious blow at any future inquiries about operations in the executive department.

One of those most concerned is Senator Dodd. He said he has been told repeatedly that the State Department has nothing against Mr. Otepka and will let him return to his former security duties.

"This has been a grave wrong," the Senator said. "I am greatly disappointed that it has not been straightened out. It is extremely trying and cruel to keep this man in this position for such an extended period of time."

If the Otepka case stood alone, Members of Congress say they might not be as concerned as they are. It could be dismissed as an example of the infighting, often vicious, in Washington's bureaucracy.

REASSIGNMENTS APPEALED

But the facts themselves, and other disclosures, some related and some not, have commended the case to the attention of Congress Members on the basis of what can happen here.

One matter has been the revelation in a House inquiry of the widespread use in Government circles, particularly in the Defense Department, of lie detector tests.

Another has been the action of six of Mr. Otepka's former associates—and prospective witnesses in his hearing—in appealing to the Civil Service Commission from State Department reassignments which they consider a reduction in rank.

One of these men is Harry M. Hite of 1112 Hillcrest Drive SW., Vienna, Va. In his letter of appeal to the Commission, he wrote:

"All have expressed their strong convictions concerning Mr. Otepka's innocence of the wrongdoings with which he has been charged."

WOULD BE A WITNESS

Another is John R. Harpel, Jr., of 7425 Yellowstone Drive, Alexandria, Va. He charged some of the evidence against Mr. Otepka had been "falsely contrived," and said:

"If and when Mr. Otepka is finally afforded a hearing of the charges made against him * * * I intend to appear as a friendly witness for him."

In the usually turbulent Washington political stream, the Otepka case has created little more than a ripple.

But it runs deep. If it is not settled amicably within the State Department, it seems bound to explode into a major issue in Congress if not in the courts.

It goes back a long while and it involves one of the touchiest matters in Government—internal security—and persons in high and low places in the administration.

TWENTY-FIVE YEARS IN GOVERNMENT

The central figure, Mr. Otepka, is a veteran of more than 25 years of Government service. A rugged, dark-haired, intense man, the Chicago-born graduate of Catholic University's Law School, is regarded as a professional in security work.

Before World War II, he worked for the Civil Service Commission. After the war, he moved to the State Department. His work was that of a detective of sorts who sought the facts on the suitability of men and women for sensitive places in the Department.

It was a position without glamour and with no great prestige.

Nevertheless, in December 1960, Mr. Otepka was called into a State Department office to meet with Dean Rusk, who was to become Secretary of State, and Robert F. Kennedy, who was to become Attorney General, in the new administration.

They wanted Mr. Otepka's evaluation of several persons being considered for important positions.

One of those on whom a cautious but unflattering report was made subsequently was appointed to the White House staff and later to an even more important position in the State Department.

SECURITY CASE REVIEW

At the time, Mr. Otepka was Deputy Director of the Office of Security. He had been appointed to that position by the late Scott McLeod, and under Mr. McLeod's direction, had undertaken a review to update all the security files of State Department personnel.

Out of that review, 800 cases out of about 11,000 were identified as requiring close but discreet scrutiny. About 75 percent of the 800 were found to have past associations with Communist organizations or persons regarded as sympathetic to Communist causes, according to those familiar with the study.

Nothing was done about the report at that time. What concerned the security people was that a number of the 800 in time would move up into policymaking positions.

TROUBLES MULTIPLY

In time this happened—and in time Mr. Otepka's troubles began to accumulate, despite a Meritorious Service Award in 1958 from Secretary Dulles for "sound independent judgment, creative work, and the acceptance of unusual responsibility.

A new boss, William Boswell, suggested he give up his deputy directorship and devote his full time to evaluation work. When Mr. Otepka refused, the deputy directorship was abolished by a reduction in force.

His troubles multiplied when the new administration came in and Mr. Reilly became head of the office in April 1962. Mr. Otepka was offered a coveted appointment to the National War College, but turned it down when he found out he would not be permitted to return to his security work.

While Mr. Reilly had said he needed no deputy, he brought in Mr. Belisle as a special assistant and he occupied Mr. Otepka's old desk, and was given one grade higher which made him, in fact, Mr. Otepka's superior.

From then on, Mr. Otepka could see "the handwriting on the wall."

CRITICIZED SHORTCUTS

The man who had received the Department's meritorious award couldn't do anything right. Papers he submitted were rejected with the curt words, "rewrite" or "I don't like this" over Mr. Belisle's name.

What apparently brought matters to a head was what the toughminded security people considered—and labeled—a "shortcut" in security clearances.

This was a procedure under which investigators, as distinguished from the evaluators under Mr. Otepka, could report their findings directly to the State Department's personnel office if they considered they had uncovered no derogatory information.

Mr. Otepka protested this as weakening security. He also protested when he found that some State Department officials in the new administration were using the so-called waiver system profusely.

CALLED BEFORE COMMITTEE

By June 1963, there were more than 150 such cases and in some instances, it was found, the security clearances were backdated to make the appointees eligible for their pay. In the Eisenhower administrations there were only five such waivers.

When he was called before the Internal Security Subcommittee on three or four occasions, mostly early last year, he testified about these and other matters.

One of Mr. Otepka's appearances was in February 1963. He was followed in March by Mr. Reilly and Mr. Reilly told the subcommittee, according to the record, that Mr. Otepka had not furnished him certain information regarding some of the appointees.

Since Mr. Otepka already had testified otherwise, he submitted a statement and records to substantiate what he had said.

According to the State Department's own charges, a secretary assigned to his office would inform her superiors when Mr. Otepka's "burn bag," containing working papers that had to be destroyed, was being taken to the incinerator.

These were retrieved by the Department and from the discarded material came some of the charges against Mr. Otepka. Carbon paper and a typewriter ribbon are the basis of some of them.

SAYS EVIDENCE WAS PLANTED

Still unresolved is one charge that grew out of the "burn bag" exercise. This was that Mr. Otepka had mutilated classified documents by clipping off the classifications.

The security officer denies this and has suggested this evidence was planted in his "burn bag." He has offered to take a lie

detector test on this and challenged the State Department to have others do the same.

Mr. Otepka acknowledges that he supplied information to the Senate subcommittee. In defending himself, he reminded the State Department that Mr. Rusk had done likewise on one particular occasion.

A long while ago he learned not to talk in his own office about his ordeal. An associate came by and as far as anyone knows was not observed in entering the office. He spent some time there and had just returned to his own office when he was called before his superior.

He was told exactly how long he had been in Mr. Otepka's office and admonished to mind his own affairs.

Mr. Otepka was instructed in writing and admonished orally to keep out of his old office in room 3333 of the New State Department building. But his name is still on the door.

Dan Quill, San Antonio Postmaster 30 Years, Honored by Sigma Delta Chi Friends

EXTENSION OF REMARKS
OF
HON. RALPH YARBOROUGH
OF TEXAS
IN THE SENATE OF THE UNITED STATES
Monday, June 8, 1964

Mr. YARBOROUGH. Mr. President, one of the major factors in the growth and development of a city is the quality of its local leadership.

The city of San Antonio, Tex., is genuinely proud, and justifiably so, of Mr. Dan Quill, who has served as postmaster in this city for 30 years.

Almost $8 million in annual receipts pass through the San Antonio Post Office; and the high-quality service established in three decades of dedicated, responsible, and efficient management has played a major role in the wonderful growth story of San Antonio.

As a member of the Senate Post Office and Civil Service Committee, and having a knowledge of the heavy duties of postmasters and other postal employees and their fine record of service, it is very pleasing to see so distinguished a citizen as Mr. Quill honored for his achievements and contributions to the country.

I ask that an editorial from the San Antonio Light, of Wednesday, June 3, 1964, be printed in the Appendix of the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE POSTMASTER

The younger generation cannot remember the time when San Antonio had any other postmaster, for Dan Quill has held the job for 30 years.

We can think of no man who is better known to the public or more widely respected.

Lately, as chairman of the Red Carpet Committee of the chamber of commerce, Mr. Quill has been greeting visitors at the San Antonio International Airport.

Now he is going to get the red carpet treatment himself, as Sunday's annual awards luncheon of the local chapter of Sigma Delta Chi, the professional journalism society.

Dan Quill will receive a metal scroll for "full cooperation with the press, radio and television in giving the people all the news at all times," it is announced by Floyd Aten, chapter president.

The postmaster is a past master in the art of press relations—and in public relations, too. He has never made the mistake of becoming Olympian.

A characteristic incident comes to mind. It happened some years ago at a shopping center where there was one small postal counter.

When the clerk reported sick one morning during the Christmas rush, Mr. Quill himself took charge while arrangements were being made for a substitute.

The postmaster is truly a public servant and we congratulate him on his latest honor.

Disarmament Propaganda at a Price—III

EXTENSION OF REMARKS
OF
HON. E. Y. BERRY
OF SOUTH DAKOTA
IN THE HOUSE OF REPRESENTATIVES
Monday, June 8, 1964

Mr. BERRY. Mr. Speaker, under leave to extend my remarks, I wish to insert in the RECORD another in the series of articles by Holmes Alexander on the Council for a Livable World.

Mr. Alexander's article is as follows:

DISARMANENT PROPAGANDA AT A PRICE—PART 3

(By Holmes Alexander)

WASHINGTON, D.C.—On February 27, 1964, Senator MCGOVERN, Democrat, of South Dakota), who took $22,000 in campaign funds from a ban-the-bomb group called Council for a Livable World, introduced an amendment to cut $17 million out of Defense Department funds for aircraft, missiles, research, tests, and evaluation of military weaponry.

Without going into the usefulness of the items which the McGovern amendment would abolish (a near impossibility for a layman), I note that 4 of the 20 Senators who supported the amendment are financially beholden for campaign funds donated by the membership of the Livable World Council. They are CLARK, Democrat, of Pennsylvania, BURDICK, Democrat, of North Dakota, MCGEE, Democrat, of Wyoming, and MCGOVERN himself.

Of these four, not one is on either the Armed Services or Joint Atomic Energy Committees which study military affairs and the Nation's need for weapons. But among the 64 Senators who opposed and defeated the McGovern amendment are all the ones which most of us reporters use as checkpoints on these complex matters of military readiness: Senators RUSSELL, STENNIS, SYMINGTON, JACKSON, CANNON, the BYRDS of Virginia and West Virginia, and MARGARET CHASE SMITH.

I am very slow to attach wrongful motives to men in responsible office, and I don't believe for a moment that any of these four Senators for the McGovern amendment would willfully cast a vote that he believed to be harmful. CLARK is cantankerous (his new book is sarcastically entitled, "Congress: The Sapless Branch"), and he enjoys twitting the Senate Establishment with contrary votes. BURDICK, a country lawyer, admittedly has very little knowledge or experience in military matters. MCGEE, a former history professor, has a hungry, searching mind which loves to savor "ideas," and he has reached an intellectual and creditable conclusion about experimental disarmament. MCGOVERN, a World War II bomber pilot and a thoughtful idealist, deeply believes that the United States should take a chance, and take the lead, on world disarmament.

But, giving them full credit for sincerity and singularity (in CLARK's case), I see these Senators and some others as the nucleus of a Peace Party in Congress, backed by a pacifist lobby, the Livable World. Other Democratic Senators whom the Liveable World commends to its membership are MCCARTHY, of Minnesota, Moss, of Utah, HART, of Michigan, and GORE, of Tennessee. The Republican PROUTY, of Vermont, seems to have been added as a gesture of bipartisanship. Two Representatives, both Democrats, are on the recommended list. They are HARDING, of Idaho, and MONTOYA, of New Mexico.

Just to see how other analysts than myself would rate these men whom the Livable World appears to be collecting into a Peace Party, I have checked their ratings in the voting index compiled by Americans for Constitutional Action on the subject of "National Sovereignty." The Americans for Constitutional Action says it is "for strengthening our national sovereignty and against surrendering control of our foreign or domestic affairs or our national security to any other nation or to any international organization." I don't regard these ratings as infallible, but they do provide an arbitrary either/or indication of overriding philosophy. They show, in aggregate, how much importance a Member of Congress puts on national sovereignty as against "peace," internationalism and concern for the "world" stead of for this country.

Astonishingly, I think, MUSKIE, HART, MCCARTHY, BURDICK, MOSS, CLARK, and MCGEE get zero in this rating. GORE gets 6 percent, and PROUTY gets 50 percent. In the House, HARDING gets zero and MONTOYA gets 43 percent.

As a footnote, I think it worth adding that the Livable World has sent out a memorandum to its membership urging support of HARDING as "the logical choice of the Democratic Party to run for the Senate against Senator JORDAN in 1966." In striking contrast to HARDING's zero rating on national sovereignty, Americans for Constitutional Action rates JORDAN, Republican, of Idaho at 100 percent.

Unless I'm wrong, the pacifist lobby is trying to build up a Peace Party in the Senate, where foreign relations are decided. Respectability, of course, is an essential in an undertaking of this sort, and it's pertinent to note that the Livable World has as its executive director, in charge of the Washington office, a genuine war hero in Col. Ashton Crosby, U.S. Army, retired. His standard answer to criticisms of the Liveable World is to write or say:

"I have 14 combat decorations, including 3 silver stars, a Croix de Guerre in lieu of a fourth silver star, and 4 Purple Hearts."

This seems a bit of a nonsequitur, but Colonel Crosby told me in a telephone interview that he was sticking with the Liveable World chiefly to keep its membership from going off the deep end. Maybe he'll soon leave the Livable World and dedicate his patriotism to a concern for freedom rather than to cohabitation with our enemies.

Courts Draw Clear Line Against Interference With Rights of Independent Businessmen

EXTENSION OF REMARKS
OF
HON. JOE L. EVINS
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES
Monday, June 8, 1964

Mr. EVINS. Mr. Speaker, an important address on the subject of recent

antitrust developments affecting independent businessmen in the petroleum industry was delivered by Mr. Rufus E. Wilson, of the Federal Trade Commission, before the mid-year meeting of the National Oil Jobbers Council, Inc. Mr. Wilson, who is Chief of the FTC's Division of General Trade Restraints, gives in this address an informed, enlightening and challenging exposition of recent court decisions and Commission actions which are of major interest not only to independent businessmen generally but also to all citizens who are concerned with the preservation of free enterprise in America.

Under unanimous consent, I include Mr. Wilson's address in the Appendix of the RECORD.

The address follows:

ADDRESS BY RUFUS E. WILSON, CHIEF, DIVISION OF GENERAL TRADE RESTRAINTS, FEDERAL TRADE COMMISSION, BEFORE THE MIDYEAR MEETING, NATIONAL OIL JOBBERS COUNCIL, INC., WASHINGTON, D.C., MAY 19, 1964

When Mr. Fitzgerald initially invited me to speak before this group, he requested that I address myself to the topic "Approaches for Trade Associations in Fighting Subsidiary Programs by Public Utilities." At the same time, he advised that my address was to be informative rather than argumentative.

Although I am not at liberty to address myself to the actual topic assigned, it is hoped that my remarks will be interpreted as informative and not argumentative.

In the past year and a half there have been some antitrust developments which I believe to be of major interest to you as well as all independent businessmen in the oil or gasoline industry as well as in other industries.

The courts have made it abundantly clear in these decision that interference with the rights of independent businessmen will not be tolerated. That the legalistic facade of independence encouraged or erected and placed in effect by a large and dominant company actually exists in fact and not in fancy.

In Sun Oil [1] the Supreme Court discarded the "conduit" approach utilized by the Fifth Circuit Court of Appeals in its decision [2] and held that the section 2(b) defense was not available to a supplier who gave a discriminatorily low price to one of its dealers to meet that dealer's competition.

On April 20, 1964, the Supreme Court handed down its decision in *Simpson* v. *Union Oil Company*.[3]

The importance of this case in the field of antitrust law enforcement will be truly significant. The Honorable JOE L. EVINS, of Tennessee, in an article appearing in the CONGRESSIONAL RECORD of April 24, 1964, referred to the importance of this case in these words:

"Mr. Speaker, on Monday of this week the Supreme Court of the United States handed down a decision in an antitrust case which is recognized as being of greater importance and significance than any other antitrust case decided in this decade."

Congressman EVINS is one of the great friends and a champion of small business and at one time one of the Commission's outstanding attorneys. Mr. EVINS' appraisal of this decision must carry weight.

I assume that most, or perhaps all, of you here today are concerned about your status as independent businessmen. I further assume that the vast majority of you would be quick to take umbrage at a suggestion that you were anything but independent businessmen. To place my remarks in proper context, it is likewise my feeling that the same reaction could be expected from gasoline station dealers, who are not in a substantially different position from you except that, in terms of the integration of the oil industry they are, perhaps, one rung below you on the ladder.

Then, just 4 days after the Supreme Court's decision in Simpson, the U.S. Court of Appeals for the Seventh Circuit on April 24, 1964, handed down its decision in *Goodyear Tire & Rubber Company* v. *Federal Trade Commission* and *The Atlantic Refining Co.* v. *Federal Trade Commission* affirming the Commission's previous decision in Federal Trade Commission docket No. 6486.

In its decision the Court had this to say about the independence of the dealer operating under a lease arrangement with a major oil company:

"Ostensibly, they are independent businessmen but behind the legalistic facade of independence, there exists a servitude caused by the coercive pressures which Atlantic exerts upon its dealers. The keystone of the actual relationship between Atlantic and its dealers is the lease and the equipment loan contract with their short-term and cancellation provisions. Without repeating all the components of the relationship, it is evident that the service station dealer is more of an economic serf than a businessman free to purchase the TBA of his choice." [4]

I will come back to this case later. I wanted to mention that quotation to bring home a point.

The Honorable Paul Rand Dixon, Chairman of the Federal Trade Commission, spoke to you at your annual meeting held last November in Chicago, Ill. At that time he stated, among other things, and I quote, "Specifically, the real issue, it seems, is whether or not the industry's structure and practices will permit you—the jobbers—to maintain and strengthen your role as independent businessmen." [5]

He pointed out that there are approximately 200 companies engaged in refining; about 25,000 wholesalers (jobbers and commissioned agents); and about 200,000 retail service stations. In commenting on the vertical integration of the oil industry he said, "the fear, in short, is that the 'independent'—including the independent refiner, the independent jobber, and the independent retailer—has, as the saying goes, one foot in the grave and the other on a banana peel." [6]

In the enforcement of the statutes administered by the Federal Trade Commission we must be concerned whether the independent businessmen in the oil industry are, in fact, permitted to remain independent. I would like to treat the Goodyear case in some detail. However, I propose one caveat—it may well be that Goodyear and/or Atlantic will petition the Supreme Court for certiorari so we may not be certain at this time whether this matter is final. Yet, it is my thought, in view of the Supreme Court's holding in Simpson that certiorari will be denied.

The Federal Trade Commission issued its complaint against the Goodyear Tire & Rubber Co. and the Atlantic Refining Co. charging a violation of section 5 of the Federal Trade Commission Act which declares unlawful unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.[7] The Commission's complaint challenged the legality of the distribution of tires, batteries, and automobile accessories, commonly called TBA, to service stations under a sales commission agreement between Goodyear and Atlantic. The Commission held against Goodyear and Atlantic and issued orders to cease and desist. From this, Goodyear and Atlantic appealed.

In the challenged sales commission contract between Goodyear and Atlantic, Atlantic agreed to promote the sale of Goodyear TBA products to Atlantic's distributors and service station dealers located in New England, New York, and the Philaedlphia-New Jersey area. A sales commission was paid to Atlantic by Goodyear on the products which were sold by Atlantic's distributors and service station dealers.

Atlantic, prior to 1951 bought Lee tires and Exide batteries and various accessories from other sources and sold them to its wholesale distributors and retail dealers in the area which was the subject of the Commission's complaint. Having become dissatisfied with this method of operation, Atlantic surveyed its dealers to determine such things as preference of brands and sources of supply. The survey showed that only 11 percent of the dealers preferred Goodyear tires, and in addition, a majority of the dealers preferred to purchase their tires, batteries, and accessories from more than one source. In spite of the survey results, Atlantic entered into a sales commission contract covering TBA effective March 1, 1951, with Goodyear and a similar contract with Firestone, the two contracts covering its entire marketing area. Goodyear assigned a portion of its sales territory to Goodyear and another portion to Firestone. Firestone got the eastern Pennsylvania, western Pennsylvania, and southern regions.

Each Atlantic dealer was assigned to a specific supply point designated by Goodyear. These supply points were either Goodyear stores, Goodyear franchise dealers, or Atlantic service station dealers who were also Goodyear franchisees. Atlantic received a 10-percent override on all purcheses of Goodyear TBA made by Atlantic dealers from the tire companies' supply points, and a 7½-percent override on purchases by dealers from Atlantic's wholesale distributors.

The service station dealers were told that the new plan was a change in company policy; that Atlantic wanted them to carry Goodyear or Firestone tires, batteries, and accessories; and that the switch would be to the dealer's benefit.

Letters were sent to the dealers informing them of the availability of the plan and advised them to take advantage of it. Numerous meetings were held by Atlantic with its dealers to explain the new programs. Atlantic gave Goodyear and Firestone the names of the dealers in their respective territories so that their advertising could be installed in the service stations. Under Atlantic policy this meant that only Goodyear or Firestone identifications were to be displayed at Atlantic stations. Atlantic salesmen accompanied by either Goodyear or Firestone salesmen contacted the dealers concerning the new sponsored TBA. Reports were made to Atlantic by Goodyear and Firestone including the names of dealers who refused to permit the installation of Goodyear and Firestone signs.

Atlantic established TBA quotas; Atlantic policed the dealers; they promoted Goodyear TBA and wrote up TBA orders. Atlantic salesmen checked the books of dealers to see whether they were buying from other sources. Atlantic salesmen made trips with Goodyear salesmen to dealers to police the operation. This is called double teaming. Atlantic credit cards included the Goodyear TBA.

When Atlantic selected a new retail dealer, at least three separate interviews were held with the applicant at which the sales commission program was explained. After selection but before receiving a lease, the applicant attended an Atlantic training school where extensive discussions and demonstrations of Goodyear TBA were conducted. He was told at the school that it was to his advantage to carry Goodyear or Firestone products. He was told what Goodyear inventory he should carry and that he should

Footnotes at end of speech.